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6 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

7 TAHIR ZULFIQAR,

8 Plaintiff,

9 v.

10 NANCY A. BERRYHILL, Acting  
11 Commissioner of Social Security,<sup>1</sup>

12 Defendant.

Case No. C16-526-RAJ

**ORDER ON MOTION FOR EQUAL  
ACCESS TO JUSTICE ACT FEES**

13 Plaintiff, Tahir Zulfiqar, appealed the denial of his application for Disability Insurance  
14 Benefits (DIB). Dkt. 2. On September 29, 2016, the Court issued a Report and  
15 Recommendation (R&R) recommending remand of this matter for further proceedings. Dkt. 15.  
16 By order dated November 28, 2016, this court adopted the R&R and reversed and remanded the  
17 matter for further administrative proceedings. Dkt. 16. Plaintiff now seeks an award of fees  
18 under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412, in the amount of \$9,000.<sup>32</sup>  
19 Dkts. 18, 19, 20. The Commissioner opposes the motion on the grounds that some of the fees

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21 <sup>1</sup> Nancy A. Berryhill is now the Acting Commissioner of the Social Security Administration. Pursuant to  
22 Federal Rule of Civil Procedure 25(d), Nancy A. Berryhill is substituted for Carolyn W. Colvin as  
23 defendant in this suit. The Clerk is directed to update the docket, and all future filings by the parties  
should reflect this change.

<sup>2</sup> Plaintiff includes an additional \$20.73 in his attached timesheet but does not explain the basis for that  
charge nor does he request that additional fee in his motion. Dkts. 18, 20-1. Accordingly, the Court is  
unable to properly consider the reasonableness of that additional fee and, therefore, declines to award it.

1 plaintiff requests are unreasonable.<sup>3</sup> Dkt. 21. For the reasons discussed below, the plaintiff's  
2 motion for EAJA attorney fees is **GRANTED** in part and **DENIED** in part.

### 3 **DISCUSSION**

4 An EAJA fee award must be reasonable. *Sorenson v. Mink*, 239 F.3d 1140, 1145 (9th  
5 Cir. 2001). "The most useful starting point for determining the amount of a reasonable fee is the  
6 number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate."  
7 *Hensley v. Eckerhart*, 461 U.S. 424, 433–34, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983). The Court  
8 must also consider "the results obtained ... when determining whether EAJA fees requested by a  
9 prevailing party for an unsuccessful appeal are reasonable." *Atkins v. Apfel*, 154 F.3d 986, 988  
10 (9th Cir.1998). "[E]xcessive, redundant, or otherwise unnecessary" hours should be excluded  
11 from a fee award, and charges that are not properly billable to a client are not properly billable to  
12 the government. *Hensley*, 461 U.S. at 434. A prevailing plaintiff is also entitled to reasonable  
13 fees for the time expended in litigating the EAJA fees request. *Commissioner, INS v. Jean*, 496  
14 U.S. 154, 165–66, 110 S.Ct. 2316, 110 L.Ed.2d 134 (1990) (awarding EAJA fees for fee  
15 litigation). A party seeking fees under the EAJA "bears the burden of establishing entitlement to  
16 an award and documenting the appropriate hours expended and hourly rates." *Hensley*, 461 U.S.  
17 at 437. However, "the party opposing the fee application has a burden of rebuttal that requires  
18 submission of evidence to the district court challenging the accuracy and reasonableness of the  
19 hours charged or the facts asserted by the prevailing party in its submitted affidavits." *Gates v.*  
20 *Deukmejian*, 987 F.2d 1392, 1397-98 (9th Cir. 1992).

21 The Commissioner challenges the reasonableness of some of the fees sought. Dkt. 21.

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23 <sup>3</sup> The Commissioner does not argue that plaintiff should be denied fees on the grounds that the  
Commissioner's position was substantially justified.

1 The Commissioner contends that “[p]laintiff’s itemized time sheet includes hours that were  
2 excessive, redundant, or otherwise unnecessary.” *Id.* at 2. Specifically, the Commissioner  
3 argues that billing 11.5 hours to review the administrative record, which at 563 pages was not  
4 unusually lengthy, in addition to 3.5 hours to review the unfavorable decisions, Appeals Council  
5 denial and to listen to hearing audio tapes from 2012 and 2014, was unreasonable. *Id.* The  
6 Commissioner requests a reduction of 7 hours related to this billing. *Id.* Spending 3.5 hours to  
7 review the ALJ decision for potential errors and arguments, the Appeals Council decision, and  
8 listen to the recordings of two hearings lasting approximately 1 hour and 10 minutes does not, in  
9 and of itself, seem unreasonable to the Court. Dkt. 20-1. However, spending an additional 11.5  
10 hours purely to review the comparatively short 563 page administrative record does appear  
11 excessive. *Id.* In particularly this request seems excessive in light of the fact that plaintiff’s  
12 counsel had already listened to the hearing tapes and reviewed the ALJ’s and Appeals Council  
13 decisions (which make up approximately 90 pages of the administrative record), and then  
14 requested a separate and additional 25.35 hours solely to prepare the opening brief.<sup>4</sup> *Id.*; Dkt. 8  
15 at 1-90.

16 This request also appears excessive when compared to awards in similar cases. *See*  
17 *Hensley*, 461 U.S. at 434 (“the District Court [ ] should exclude from this initial fee calculation  
18 of hours that were not ‘reasonably expended’”), 430 n.3 and 434 n.9 (“the district court also may  
19 consider other factors identified in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714,  
20 717-719 (CA5 1974) ....” such as “awards in similar cases”); *see, e.g., Stearns v. Colvin*, 14-cv-  
21 5611, 2016 WL 730301 at \*6 (W.D. Wash., Feb. 24, 2016) (discussing nineteen EAJA awards in  
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23 <sup>4</sup> Plaintiff refers to this time in his timesheet as preparing the Motion for Summary Judgment but appears to be  
referring to preparation of the opening brief. Dkt. 20-1.

1 social security cases and noting a range of 7.6 hours to 25.4 hours for review of the file and  
2 completion of the opening brief). The plaintiff does not offer any explanation for the large  
3 amount of time spent solely in reviewing the comparatively short administrative record, nor does  
4 this case appear to involve particularly complex issues that might justify expending additional  
5 time on that task. *See Hensley*, 461 U.S. at 437 (party seeking EAJA fees “bears the burden of  
6 establishing entitlement to an award and documenting the appropriate hours expended and hourly  
7 rates”), 430 n.3 and 434 n.9 (in determining an award “the district court also may consider” other  
8 factors including “the novelty and difficulty of the questions”); *and see Stearns*, 2016 WL  
9 730301 at \*6 (finding a reduction in fees appropriate in part because “[t]he facts, record, and  
10 arguments made ... in this particular case were not so unusual or complex to require ... such a  
11 high number of attorney hours.”). Accordingly, the Court finds a 4 hour reduction to be  
12 appropriate here and allows a total of 7.5 hours for review of the administrative record.

13         The Commissioner also contends the plaintiff requested an unnecessary amount of time  
14 to draft and file the complaint. Dkt. 21 at 3. The Commissioner argues that the complaint is a  
15 standard document in social security cases and that plaintiff’s request of 2.75 hours to draft and  
16 revise the complaint is unreasonable. *Id.* The Commissioner contends a 2 hour reduction would  
17 be appropriate. *Id.* The Court agrees that this request appears excessive in light of the fact that  
18 the complaint seems to be largely boilerplate with very few facts included with respect to this  
19 specific case. *See* Dkt. 2. The plaintiff does not offer any further explanation for the large  
20 amount of time spent on this apparently straight forward, routine task. Accordingly, the Court  
21 finds a 1.75 hour reduction is appropriate here and allows a total of 1 hour. *See, e.g.,*  
22 *VonBerckefeldt v. Astrue*, 09-cv-1927, 2011 WL 274290 at \*8 (E.D. Ca. July 14, 2011) (finding  
23 “1.5 hours for preparation and filing of a boilerplate complaint ... excessive and ...[allowing] 1.0

1 hour.”)

2 Finally, the Commissioner contends the 1.45 hours plaintiff requests for reviewing the  
3 scheduling order and calendaring dates in this case was excessive in light of the fact that the  
4 scheduling order was only three pages long. Dkt. 21 at 3. The Commissioner requests a 1 hour  
5 reduction. *Id.* The Court agrees that 1.45 hours to review a three page order and calendar three  
6 dates is excessive. The plaintiff, again, does not offer any further explanation for the large  
7 amount of time spent on this apparently short, simple task. Accordingly, the Court agrees with  
8 the Commissioner that a 1 hour reduction is appropriate here and allows a total of .45 hours.

9 In sum, the Court finds a reduction of 6.75 hours to plaintiff’s requested total of 46.95  
10 hours to be appropriate in this case. Accordingly, plaintiff is entitled to fees of \$7,706.34  
11 representing 40.2 hours of work.

## 12 CONCLUSION

13 For the foregoing reasons, the plaintiff’s motion for EAJA attorney fees (Dkt. 18) is  
14 **GRANTED** in part and **DENIED** in part. Plaintiff is awarded attorney’s fees in the amount of  
15 \$7,706.34 under 28 U.S.C. § 2412(d) (EAJA). Subject to any offset allowed under the Treasury  
16 Offset Program as discussed in *Astrue v. Ratliff*, 560 U.S. 586 (2010), payment of this award  
17 shall be made to plaintiff’s attorney. Any check for EAJA fees shall be mailed to plaintiff’s  
18 counsel, Matthew T. Russell, Esq., at Russell & Hill, PLLC, 3811-A Broadway, Everett, WA  
19 98201.

20 DATED this 2nd day of May, 2017.

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23 The Honorable Richard A. Jones  
United States District Judge